



ANNEX 9.2 PROCUREMENT GUIDELINES



SECRETARIAT OF THE UNION FOR THE MEDITERRANEAN
(UfMS)



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I. INTRODUCTION

The UfMS is pleased to present its Guidebook to Public Procurement in order to provide general information to simplify the understanding of the procurement process.

In this regard, it is oriented to set out the various procedures to be followed by the UfMS when procuring services, supplies and works for its own account, it does not address specific terms and conditions of any particular contract that the UfMS may conclude.

This Guidebook merely **clarifies and complements procedures** in force; it **does not substitute** the provisions of the applicable legal framework mentioned below.

1.1 Applicable legal framework

UfMS Public Procurement is governed by the following regulations:

- (i) Statutes of the UfMS
- (ii) EuropeAid rules and regulations including the Practical Guide to Contract Procedures for EU External Actions (PRAG)¹ and the Financial Management Toolkit for Recipients of EU Funds for External Actions, the Project Cycle Management Guidelines and the Financial Regulation and its Implementing Rules
- (iii) Laws of the hosting country (Spain) and all their amendments as well as their executive amendments

1.2 Glossary

The following terms have the meaning attributed to them in the Annex I: “contractor”, “supplier”, “service provider”, “economic operator”, “tenderer”, “candidate”, “Open procedures”, “Restricted procedures”, “Competitive dialogue”, “negotiated procedures”, “design contests”, “written” or “in writing”, “electronic means” and “PRAG”.

1.3 Language

The offers, all correspondence and documents related to the tender exchanged by the tenderer and the UfMS shall be written in English.

Notwithstanding the foregoing, in the case of local procurement, the UfMS may decide to issue the Tender Dossier and/or allow the submission of the tender in the local language - Spanish.

¹ PRAG 2014 available at http://ufmsecretariat.org/wp-content/uploads/2014/01/PRAG_2014_en.pdf



1.4 Procurement website section

The UfMS makes available a specific section in its website dedicated to procurement. This section is intended to provide useful information concerning procurement activities of the UfMS.

Where applicable, UfMS' request for tenders and other solicitation documents will be advertised and available for electronic download from the UfMS procurement website section at:

<http://ufmsecretariat.org/procurement/>

II. BASIC RULES

In order to properly accomplish the procurement activity, best international practices are underscored so as to develop a professional procurement framework, better serve the different customers/requesters and safeguard UfMS interests and image.

2.1 Competitive tendering

The basic principle governing the award of contracts is competitive tendering. The purpose is twofold:

- To ensure the transparency of operations
- To obtain the desired quality of services, supplies and/or works at the best possible price

UfMS procurement requirements shall be met by maximizing competition amongst eligible/capable sources. When properly conducted, competition secures most favorable sourcing and pricing.

2.2 Eligibility rule

Participation in tender procedures administered by the UfMS is open on equal terms to all natural and legal persons effectively established in a Member State of the Union for the Mediterranean. Tenderers must state, in the tender, the country of which they are nationals by presenting the usual proof of nationality under their national legislation. This rule does not apply to the experts proposed by service providers taking part in tender procedures for service contracts.

2.3 Rule of origin

All tenderers must state the origin of supplies in their tender if the amount of the estimated budget is above of EUR 100.000,00 (VAT not included). Eligible origins are defined in the above section, which specifies the countries in which such supplies must be originated from.

Providers must present proof of origin to the Secretariat no later than when the first invoice is presented. The certificate of origin must be made out by the competent authorities of the country of origin of the supplies (Chamber of Commerce confirmation or customs declaration).

If the estimated budget (of the tender procedure as a whole or if divided into lot, per lot) is below EUR 100.000,00 (VAT not included), the supplies under the contract may originate from any country.



III. PROCUREMENT PROCEDURES

The applicable standard procedures explained later in this guide are summarized in the table below. They are divided between those for services, supplies and works.

| | | | | |
|--------------------|--|--|--|----------------------------|
| A. SERVICES | ≥ € 300,000 International restricted tender procedure | < € 300,000 but > € 20,000 Competitive negotiated procedure | | ≤€ 20,000 Single tender |
| B. SUPPLIES | ≥ € 300,000 International open tender procedure | < € 300,000 but ≥ € 100,000 Open tender procedure published locally | < € 100,000 but > € 20,000 Competitive negotiated procedure | |
| C. WORKS | ≥ € 5,000,000 International open tender procedure | < € 5,000,000 but ≥ € 300,000 Open tender procedure published locally | < € 300,000 but > € 20,000 Competitive negotiated procedure | |

The applicable procurement procedure shall be based on the estimated value for the contract in question, which is the total amount payable, net of VAT. This calculation shall take into account the maximum budget, including any form of option and any renewals of the contract.

3.1 Types of contracts

The UfMS has three main types of contract, i.e. work contracts, supply contracts and services contracts.

3.1.1 Work contracts

Work contracts are contracts having as their object either the execution, or both the execution and design, of works or the realization, by whatever means, of a work corresponding to the requirements specified by the UfMS. (i.e. infrastructure and other engineering works)

A work means the outcome of building or civil engineering works taken as a whole, which is sufficient of itself to fulfill an economic or technical function.

3.1.2 Supply contracts

Supply contracts are contracts other than work contracts having as their object the purchase, lease, rental or hire purchase, with or without option to buy, of products (i.e., equipment and materials)



A contract having as its object the supply of products and which also covers, as an incidental matter, sitting and installation of operations shall be considered to be a supply contract

3.1.3 Service contracts

Service contracts are contracts other than works or supply contracts having as their object the provision of services (e.g., technical assistance, studies, provision of know-how and training, event organization etc.)

A service contract may be purchased in two different ways:

- Global price – recommended where specified outputs are clearly defined in advance (e.g. a study on a given specific topic). The service will be paid on the basis of the delivery of the specified outputs.
- Fee-based – recommended where the final detailed output is difficult to foresee in exact terms, or where the workload to achieve the specified output is difficult to quantify in advance. Therefore it is economically more advantageous to pay the services on the basis of time actually worked.

3.2 Types of procedures

There are several different procurement procedures, each one allowing for a different degree of competition.

3.2.1 Open procedures

In this procedure all economic operators may submit a tender, no negotiation is allowed. The contract is given maximum publicity by publishing a contract notice at least in the UfMS procurement website section.

The contract notice may include all the relevant information for the tenderers and will ensure genuine competition. Any interested tenderer may ask to receive the Tender Dossier.

INTERNATIONAL OPEN PROCEDURE

International open calls for tender are published after a contract prior information notice. The minimum deadline for submitting tenders is **50 days** from the date of publication of the contract notice, provided that it have elapsed a minimum of 30 days since the publication of the individual contract prior information notice

LOCAL OPEN PROCEDURE

Local open calls for tender are published with a minimum deadline for submitting tenders of **30 days** from the date of publication of the contract notice.



3.2.2 Restricted procedures

In restricted calls for tender, all economic operators may ask to submit a tender but only those who satisfy the selection criteria may be invited to do so. This procedure also exclude all other terms of the contract negotiation with the applicants or candidates

The contract is given maximum publicity by publishing a contract notice at least in the UfMS procurement website section. An individual contract prior information notice will be published, at least 30 days before the publication of the contract notice.

The contract notice will state the **number of candidates** which will be **invited** to submit tenders within a range of four to eight candidates, in order to ensure genuine competition. The minimum deadline for submitting applications is **30 days** from the date of publication of the contract notice. The actual deadline will be determined by the contract's size and complexity.

All would-be service providers fulfilling the conditions may ask to participate but only candidates satisfying the published selection criteria and invited in writing by the UfMS may submit a tender.

The minimum period between the **dispatch of the letter of invitation** to tender and the deadline for receipt of tenders is **50 days**. However, in exceptional cases, this period may be shorter.

3.2.3 Competitive negotiated procedures

In these procedures the UfMS invites candidates of its choice to submit tenders; at least 3 tenderers are invited. The short-listed candidates are invited by sending them a letter of invitation to tender accompanied by a Tender Dossier.

The shortlist of potential tenderers is **based on their capacity** in the field of the contract as per the **UfMS internal assessment**. The minimum period between the **dispatch of the letter of invitation** to tender and the deadline for receipt of tenders is **30 days**.

Any interested tender may request to be part of the UfMS database to take part in future procurement opportunities, by sending their interest at procurement@ufmsecretariat.org

3.2.4 Single tenders

In single tender procedures a contract may be awarded directly.



IV. TENDER DOSSIER

The Tender Dossier is the file which contains all the documents needed to prepare and submit a tender.

The Tender Dossier provides **all the provisions and information** that tenderers need **to submit a tender**: the procedures to follow, the documents to provide, cases of non-compliance, award criteria and their weightings, the deadline for submission and other procurement conditions.

The following documents are included in the Tender Dossier:

- A. Instructions to tenderers & Contract Notice
- B. Draft Contract Agreement and Special Conditions with annexes
 - Annex I. General Conditions
 - Annex II. Terms of reference / Technical Specifications
 - Annex III. Technical Offer
 - Annex IV. Financial Offer
 - Annex V. Other documents
- C. Other information (shortlist, administrative compliance grid, evaluation grid)
- D. Tender submission form

The Tender Dossier also includes a check list to be used to ensure that the tenderer has provided all the documentation for the tender and in the correct way. The check list should be completed and attached to the other documents as part of tenderer's application. It also includes the deadline to submit the application with all the documents.

4.1 Additional information

All the questions and answers in relation with public procurement will be published in the website; no phone calls or oral exchanges will be accepted.

The UfMS publishes information related to all its tendering procedures on its website:
<http://ufmsecretariat.org/procurement/>

All procurement actions shall be governed by written documentation



V. SUBMISSION OF TENDERS

Tenderers are advised to make sure to read very carefully the instructions on how (envelopes, amount of copies, etc.) and until when to submit offers, as any failure to meet the requirements might lead to the exclusion from the tendering procedure. Offers can be submitted either by post or by hand.

Any **infringement** of the previous rules will lead to **rejection of the tender**.

The tender must be submitted in accordance with the Tender Dossier. UfMS is not liable for any compensation with respect to tenderers whose offers have not been accepted.

IMPORTANT INFO FOR TENDERERS

- Read the PRAG before submitting your bids.
- All questions and answers (Q&A) in relation with any procedure will be published on the UfMS' website exclusively – www.ufmsecretariat.org/procurement
- If you are downloading Call related documents from UfMS' website, kindly send us an e-mail at procurement@ufmsecretariat.org to declare your interest in order to be notified directly in case of clarifications. Please put the 'reference code' in the subject field of the email.

The expenses incurred in the preparation and submission of tenders will not be reimbursed.

5.1 Deadline for submission of tenders

Tenders must reach the UfMS at the address and by no later than the date and time shown in the Tender Dossier.

Tenders submitted **after the deadline** will be **excluded** from evaluation

5.1.1 Receipt and registration of tenders

On receiving tenders, the UfMS will register them, stating the date and time of reception, and provide a receipt for those delivered by hand. The envelopes containing the tenders will remain sealed and be kept in a safe place until they are opened. The outer envelopes of tenders will be numbered in order of receipt (whether or not they are received before the deadline for submission of tenders).

The **offer received** from the successful tenderer will become an **integral part** of the awarded contract.



5.1.2 Period of validity

Tenderers are bound by their tenders for the period specified in the Tender Dossier. The period of validity of tender is fixed at 90 days from the deadline for the submission of tenders. In exceptional cases, before the period of validity expires, the Contracting Authority may ask tenderers to extend the period for a specific number of days, which may not exceed 40.

The selected tenderer must maintain its tender for a further 60 days. A further period of 60 days is added to the validity period irrespective of the date of notification.

VI. EVALUATION PROCESS

Tenders are opened and evaluated by an Evaluation Committee formally and promptly appointed by the UfMS as per the defined **selection and award criteria**.

6.1 Selection criteria

The UfMS shall draw up clear and non-discriminatory selection criteria for the purpose of assessing that the candidate/tenderer has sufficient financial, economic, technical and professional capacity to implement the tasks of the contract.

The selection criteria should be clear and non-discriminatory and may not go beyond the scope of the contract and will be specified in the Tender Dossier.

An **economic operator** may, for a particular contract, **rely on the capacities of other entities**, regardless of the legal nature of the links which it has with them.

6.1.1 Grounds for exclusion from participation

Tenderers will be excluded from participation in a procurement procedure if:

- a) they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- b) they have been convicted of an offence concerning their professional conduct by a judgment which has the force of *res judicata*;
- c) they have been guilty of grave professional misconduct proven by any means which the UfMS can justify;
- d) they have not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or those of the country of the Secretariat's headquarters or those of the country where the contract is to be performed;



- e) they have been the subject of a judgment which has the force of res judicata for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the UE's financial interests;
- f) they are currently subject to an administrative penalty referred to in section 2.3.4 of the PRAG.

Tenderers must **certify** that they are not in one of the situations listed above.

6.2 Award criteria

Contracts are awarded on the basis of award criteria established in the Tender Dossier in one of the following two criteria:

- Lowest price
- The best-value-for-money procedure

The criteria will be precise, non-discriminatory and not prejudicial to fair competition.

6.2.1 Lowest price

When using lowest price criteria, the award of a contract shall be made to the provider whose offer has been evaluated and determined as both:

- Technical Evaluation as per “Responsive/compliant/acceptable” bid; and
- Financial Evaluation as per bidder offering the “lowest price/cost”.

“Responsive/compliance/acceptable” can be defined as fully meeting the Specifications and/or Terms of Reference required, or reaching a pre-defined threshold of a maximum attainable score based on the requirements stated in the specifications document. Among the remaining responsive/compliant/acceptable offers the lowest one is selected.

This criterion may be used for procurement where:

- Technical Specifications/Terms of Reference are clear
- Responsiveness/compliance/acceptability is easy to determine
- Price/cost is overriding evaluation criterion compared to other aspects of Value for Money

6.2.1 Best value for money

The best value for money criteria covers both the technical quality and price of the tender. The two main components of this criterion are:



- Technical Evaluation as per “Evaluation Grid”

The “Evaluation Grid” is intended to help the evaluation of the quality of the proposals in relation to the objectives and priorities set for the contract and in order to award procurement to bids which fulfil UfMS’ objectives as efficiently as possible. The Evaluation Grid will set out the technical criteria, sub-criteria and weightings to be used for technical evaluation.

✓ *80 point threshold*

Any tender falling short of the 80-point threshold is automatically rejected. If no tender achieves 80 points or more, the tender procedure will be cancelled.²

Out of the tenders reaching the 80-point threshold, the best technical offer is awarded 100 points. The others receive points calculated using the following formula:

Technical score = (final score of the technical offer in question/final score of the best technical offer) x 100.

- Financial Evaluation as per “Quotation Matrix/Price Schedule”

The “Quotation Matrix/Price Schedule” consists in a calculation process to ensure that the best possible outcome has been achieved by taking into account all relevant costs and benefits over the entirety of the work, product or service life-cycle.

✓ *Abnormally low*

If, for a given contract, tenders appear to be abnormally low, the UfMS shall, before rejecting such tenders on that ground alone, request in writing details of the constituent elements of the tender which it considers relevant and shall verify those constituent elements, taking account of the explanations received.

The tender with the lowest financial offer receives 100 points. The others are awarded points by means of the following formula:

Financial score = (lowest price / price of the tender being considered) x 100.

The **best value for money** is established by weighing technical quality against price on an **80/20 basis**.³ This is done by multiplying:

- the scores awarded to the technical offers by 0,80

² Except otherwise provided in the Tender Dossier.

³ Except otherwise provided in the Tender Dossier.



- the scores awarded to the financial offers by 0.20.

6.3 Exclusion from award of contracts

Contracts may not be awarded to tenderers which, during the procurement procedure:

- are subject to a conflict of interests;
- are guilty of misrepresentation in supplying the information required by the UfMS as a condition of participation in the contract procedure or fail to supply this information;
- find themselves in one of the situations of exclusion for the relevant procurement procedure.

VII. OTHER RELEVANT CONSIDERATIONS

7.1 Lots

When a procurement procedure is divided into lots, this is explicitly mentioned in the contract notice and the Tender Dossier. In the case of lots, unless otherwise stated in the tendering specifications, tenderers may submit tenders for one lot only, a combination, or all of them.

Each individual lot is evaluated independently of the other lots.

7.2 Subcontracting

Subcontracting is when the contractor enters into a legal commitment (subcontracts) with one or more economic operator(s) in order to deliver part of the work, service or supply described in the Tender Dossier.

The possibility to **subcontract** shall be stated in the contract notice and **Tender Dossier**

Subcontractors shall satisfy the eligibility criteria applicable for the award of the contract and shall not fall under the exclusion criteria described in the Tender Dossier. UfMS will have no direct legal commitment towards such subcontractor (s) and only the main contractor is liable to the UfMS for the performance of the contract as a whole.

7.3 Framework options

A framework option is an agreement with one or more economic operators, the purpose of which is to establish the terms governing specific contracts which may be awarded during a given period, particularly as regards duration, subject, price, maximum value, implementation rules and the quantities envisaged.

7.3.1 Framework contracts

Framework agreements that establish all the terms (framework contracts) are legal instruments under which the terms applicable to any orders under this type of framework agreement are set out in a binding manner for the parties to the framework agreement.



7.3.2 Framework agreements

Framework agreements that do not establish all the terms (framework agreements *stricto sensu*) are legal instruments under which the terms applicable to any orders are left to be established later, upon reopening competition under multiple framework agreements or in subsequent consultation with the sole economic operator.

Multiple frameworks are framework options with **several economic operators**

7.4 Settlement of disputes

Any disputes arising out of or relating to contract awarded by UfMS procurement procedures which cannot be settled otherwise shall be referred for arbitration to the *Tribunal Arbitral de Barcelona* (TAB) [Barcelona Arbitration Court], of the *Associació Catalana per a l'Arbitratge* [Catalan Arbitration Association], which is entrusted with the appointment of the arbitrator or arbitrators and the administration of the arbitration in accordance with its Regulations in force at the start of the arbitration.

VIII. FUTURE INFORMATION

For any further information regarding tenders or procurement activities, you can contact us at:

UfMS Procurement Service
Palau de Pedralbes
Pere Duran Farell 11
08034 Barcelona, Spain
Phone: 00 34 93 521 41 89
E-mail: procurement@ufmsecretariat.org



ANNEX 1- GLOSSARY

“contractor”, “supplier”, “service provider”, “economic operator”, “tenderer”, “candidate”, “Open procedures”, “Restricted procedures”, “Competitive dialogue”, “negotiated procedures”, “design contests”, “written” or “in writing”, “electronic means” and “PRAG”

- The terms **contractor**, **supplier** and **service provider** mean any natural or legal person or public entity or group of such persons and/or bodies which offers on the market, respectively, the execution of works and/or a work, products or services.
- The term **economic operator** shall cover equally the concepts of contractor, supplier and service provider. It is used merely in the interest of simplification.
- An economic operator who has submitted a tender shall be designated as a **tenderer**. One which has sought an invitation to take part in a restricted or negotiated procedure or a competitive dialogue shall be designated a **candidate**.
- **Open procedures** means those procedures whereby any interested economic operator may submit a tender.
- **Restricted procedures** means those procedures in which any economic operator may request to participate and whereby only those economic operators invited by the Bank may submit a tender.
- **Competitive dialogue** is a procedure in which any economic operator may request to participate and whereby the Bank conducts a dialogue with the candidates admitted to that procedure, with the aim of developing one or more suitable alternatives capable of meeting its requirements, and on the basis of which the candidates chosen are invited to tender.
- **Negotiated procedures** means those procedures whereby the Bank consults the economic operators of their choice and negotiate the terms of contract with one or more of these.
- **Design contests** means those procedures which enable the Bank to acquire, mainly in the fields of town and country planning, architecture and engineering or data processing, a plan or design selected by a jury after being put out to competition with or without the award of prizes.
- **Written or in writing** means any expression consisting of words of figures which can be read, reproduced and subsequently communicated. It may include information which is transmitted and stored by electronic means.
- **Electronic means** means using electronic equipment for the processing and storage of data which is transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means.
- **PRAG** means the Practical Guide to Contract Procedures for EU External Actions (PRAG) that explains the contracting procedures applying to all EU external aid contracts financed from the EU general budget.